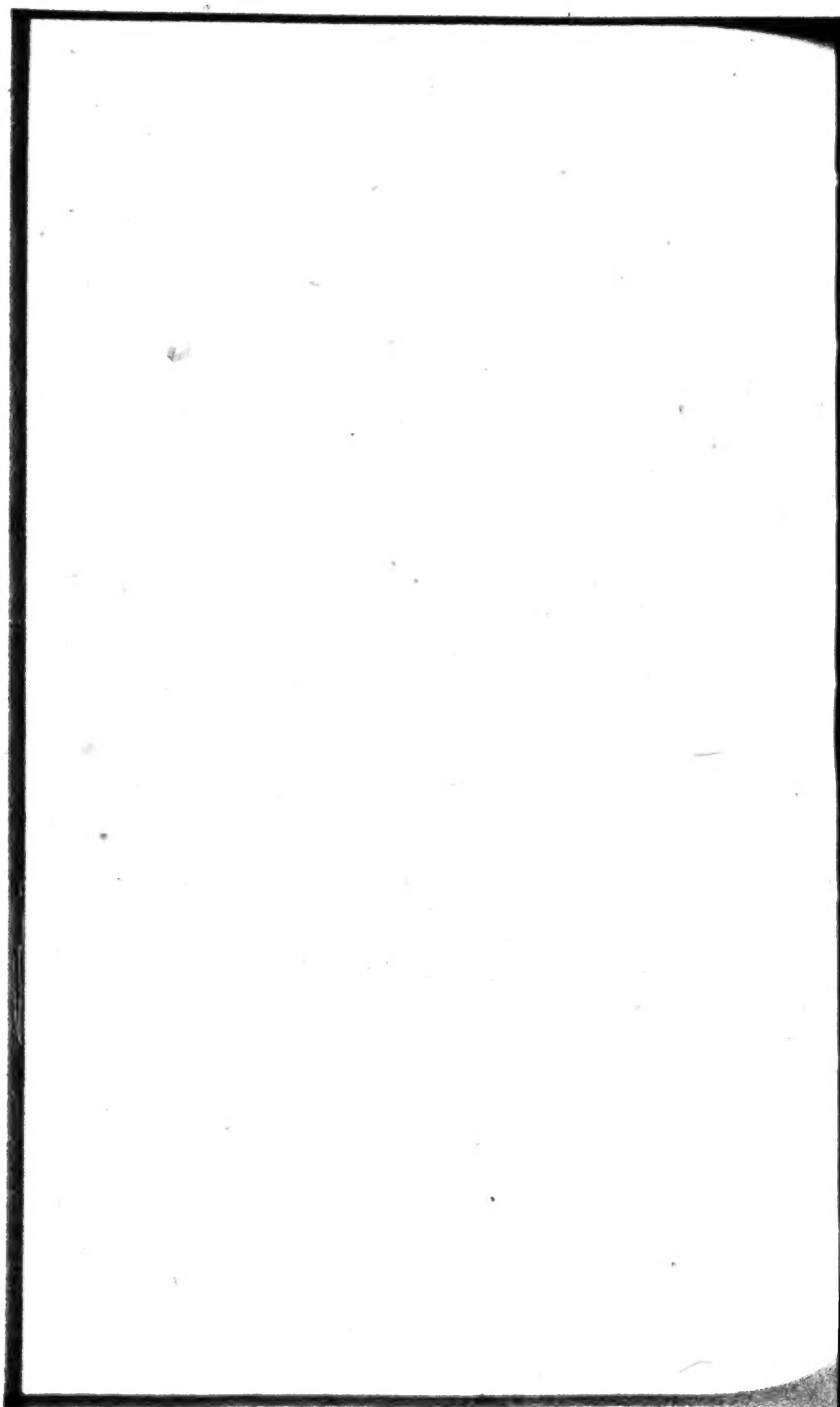


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IN THE UNITED STATES COURT OF CLAIMS
Docket Entries

ARCHIE L. MASON AND MARGARET R.
MASON, Administrators of the Estate of
Rose Mason, Osage Allottee #327, a
deceased restricted Osage Indian

vs.

THE UNITED STATES

Case No. 417-70

Osage trust funds wrongfully paid out to state taxing
authorities

Date	Proceedings
Nov 20 1970	Filing fee of \$10 paid by plaintiffs.
Dec 4 1970	Court filed order referring case to Commissioner George Willi.
Dec 30 1970	Defendant's motion for extension of time (to March 5, 1971) to file an answer filed. Copies (2) to atty. ALLOWED JAN 4 1971.
Mar 5 1971	Defendant's motion for inclusion of third party defendant (the State of Oklahoma) filed. Copies (2) to atty. DENIED MAR 12 1971, ALSO SEE COURT ORDER OF APR 30 1971 see comr's. order.
Mar 5 1971	Defendant's answer to petition filed. Copies (13) to atty.
Mar 12 1971	Commissioner's order under Rule 41 and 12(c) denying defendant's motion for inclusion of third party defendant, filed. Copies (2) to parties.
Mar 19 1971	Defendant's motion for extension of time (to April 14, 1971) to file request for review under Rule 53(b)(3) filed. Copies (2) to atty. ALLOWED MAR 23 1971.
Apr 8 1971	Defendant's request for review of commissioner's order filed March 12, 1971, etc. filed. Copies (2) to atty. SEE COURT ORDER OF APR 30 1971.

Date	Proceedings
Apr 20 1971	Plaintiffs' motion for leave to file memorandum in support of defendant's request for review of commissioner's order filed. Copies (2) to deft.
Apr 30 1971	Court entered order granting defendant's request for review, vacating the trial commissioner's order of March 12, 1971 and granting defendant's motion, filed March 5, 1971, for inclusion of third-party defendant. Copy to parties. (Summons issued & delivered this day to deft's attorney for service: Apr 30, 1971).
Apr 30 1971	Petition of U. S. against 3rd party Deft. filed. Copies to Pl. & 3pty.
Apr 30 1971	Commissioner's order under Rules 12(c) and 38(a) filed. Copy to parties. (pltfs. to file reply within 40 days)
May 27 1971	Return of U. S. Marshal showing service of Summons on Secretary of State, State of Oklahoma, on May 7, 1971 filed. Notice to parties.
Jun 9 1971	Plaintiffs' motion for extension of time (to June 14, 1971) to file a reply to the fifth defense of the defendant's answer, as per the commissioner's order of April 30, 1971 filed. Copies (2) to deft. ALLOWED JUNE 10 1971.
Jun 14 1971	Plaintiffs' reply to fifth defense of answer filed. Copies (13) to deft.
Jun 18 1971	Third party defendant's (State of Oklahoma's) answer filed. Copies (10) to deft. and (3) to pltf.
Jun 24 1971	Commissioner's order under Rule 111(a) filed. Copy to all parties.
Jul 1 1971	Plaintiffs statement under Rule 111(a) filed. Copies (2) to deft, (1) to Duncan.
Jul 13 1971	Defendant's response to commissioner's order of June 24, 1971 filed. Copies (2) to atty. and (1) to Duncan.

Date	Proceedings
Jul 15 1971	Statement of third party defendant filed. Copies (14) to parties.
Jul 16 1971	Commissioner's supplemental order under Rule 111(a) filed. Copy to all parties. (filings due August 2, 1971)
Jul 21 1971	Plaintiffs motion for extension of time (to August 12, 1971) to file statement pursuant to commissioner's order filed. Copies (2) to deft. (1) to Duncan. ALLOWED JULY 22, 1971.
Jul 29 1971	Defendant's motion for extension of time (to August 30, 1971) to file statement pursuant to commissioner's order filed. Copies (2) to pltf. and (1) to 3rd party. DENIED JUL 30 1971 with defendant allowed until August 12, 1971, the same extended date approved on plaintiff's request for an extension of time to comply with the subject order, to respond to the single inquiry directed to it under the order, i.e., whether it concedes for all purposes germane to the present litigation that the underlying tax assessment paid to Oklahoma was owing to the State of Oklahoma as a matter of law.
Aug 12 1971	Defendant's response to commissioner's order of July 16, 1971 filed. Copies (2) to atty. and (1) to Duncan.
Aug 12 1971	Plaintiffs statement under Rule 111(a) filed. Copies (2) to deft. and (1) to Duncan.
Aug 13 1971	Commissioner's order under Rule 13(a) directing defendant to file dispositive motion (by September 27, 1971) and for other purposes filed. Copy to parties.
Sep 28 1971	Defendant's motion for summary judgment and brief in support thereof filed. Copies (2) to parties. (BLOC)
Oct 27 1971	Plaintiffs' motion for extension of time (to November 2, 1971) to file opposition to motion for summary judgment filed. Copies (2) to deft. ALLOWED OCT 29 1971.

- Nov 2 1971 Plaintiffs' cross motion for summary judgment and opposition to defendant's motion for summary judgment and supporting brief filed. Copies (3) to deft. and (2) to 3rd party.
- Nov 26 1971 Defendant's motion for extension of time (to December 16, 1971) to file response on summary judgment filed. Copy to parties. ALLOWED DEC 14 1971.
- Dec 14 1971 Defendant's brief in opposition to cross motion for summary judgment, etc. filed. Copies (2) to parties.
- Dec 29 1971 Plaintiffs' brief in response to defendant's opposition to plaintiffs' cross motion for summary judgment filed. Copies (3) to deft. and (2) to 3rd party.
- Mar 6 1972 Argued and submitted on defendant's motion for summary judgment and plaintiffs' cross motion for summary judgment. Plaintiffs by letter to inform the court relative to an issue in the referred to *West* case in the Supreme Court.
- Mar 14 1972 Plaintiff's memorandum re *West v. Oklahoma Tax Commission* filed. Service on parties by plaintiff.
- Jun 16 1972 Judgment for plaintiffs against defendant and for defendant against the third-party defendant (State of Oklahoma) as set forth in the opinion with the amounts of recovery to be determined under Rule 131(c). Opinion by Judge Davis. Dissenting opinion by Judge Skelton.
- Oct 18 1972 Notice of filing in Supreme Court of a petition for writ of certiorari by State of Oklahoma (3rd party) filed. (on Oct 16 1972). No. 72-606.
- Oct 31 1972 Notice of filing in Supreme Court of a petition for writ of certiorari by United States on October 27, 1972, No. 72-654 filed.
- Jan 18 1973 Orders of the Supreme Court, dated January 15, 1973, granting the petitions for writ of certiorari filed.
- Feb 1 1973 Record in re certiorari forwarded to Clerk of the Supreme Court.

IN THE UNITED STATES COURT OF CLAIMS

ARCHIE L. MASON AND MARGARET R. MASON,
Administrators of the Estate of Rose Mason,
Osage Allottee #327, a deceased restricted
Osage Indian,

PLAINTIFFS,

No. 417-70

v.

THE UNITED STATES OF AMERICA,

DEFENDANT.

PETITION

[Filed Nov. 20, 1970]

1. This is an action to recover certain Osage trust funds wrongfully paid out by the defendant to the State of Oklahoma taxing authorities. Jurisdiction is vested in this Court pursuant to 28 U.S.C. § 1491.

2. Plaintiffs are the Administrators of the Estate of Rose Mason, a deceased Osage Indian who never received a certificate of competency under the Osage Allotment Act of 1906, 34 Stat. 539, as amended.

3. By virtue of the restricted or non-competent status of the decedent Rose Mason, defendant, through its agents, held, controlled and managed all of the assets and properties of said decedent which are the subject matter of this litigation and acted as a guardian or trustee with respect to said properties.

4. Defendant was under a statutory duty, pursuant to the Osage Allotment Act, 34 Stat. 539, as amended, to hold, manage and conserve the assets and properties of restricted, non-competent Osage Indians such as the above-named decedent, and, at the termination of such wardship, to turn over said properties free from any lien or encumbrance.

5. The decedent died on January 29, 1967. Upon her death, defendant, through its agents, prepared and filed an Oklahoma estate tax return for said decedent, and included therein, as part of the corpus of her estate, certain items

which were property held in trust by the defendant for the benefit of said decedent, namely, Osage headrights, securities and cash held by the defendant in trust for the decedent, and the share of the decedent in the Osage Nation Trust Fund. The trust items included were as follows:

Trust Item	Declared Value
a. Osage Headrights	\$48,649.98
b. Securities held in trust	19,989.88
c. Cash held in trust	7,002.89
d. Unpaid headrights payment	1,925.00
e. Surplus Trust Funds	48,393.17

Items b, c and d arose from headright payments credited to decedent.

6. Defendant, through its agents, computed the Oklahoma estate tax on the gross estate, including therein the value of the above described trust property, deducted the amount of such tax (\$7,762.93) from the corpus of the estate of the decedent and paid such amount to the Oklahoma taxing authorities.

7. Defendant's payment of the Oklahoma estate tax on the trust properties described in Paragraph 5 hereof was erroneous and wrongful and in breach of its statutory obligation to turn over the trust properties free from any lien or encumbrance.

8. Defendant's erroneous and wrongful payment of the Oklahoma estate tax, as set forth above, depleted and reduced the value of the trust properties held, managed and controlled by the defendant, in violation of the Osage Allotment Act. Such erroneous and wrongful conduct has damaged plaintiffs in that the estate of the decedent has been depleted or reduced by such wrongful payment and has damaged the beneficiaries of the estate of the decedent in that their respective distributive shares of the decedent's estate have been depleted or reduced by such wrongful payment.

9. The defendant, as trustee and custodian of the funds of the decedent, and funds of the decedent's restricted Osage beneficiaries, owed a duty to pay interest at prevailing rates on said funds, under general fiduciary law, the Osage statutes, and 25 U.S.C. § 162a; and as a result, de-

defendant owes interest on the amounts wrongfully removed from the said funds, until restored.

WHEREFORE, plaintiffs pray for judgment against defendant in the amount of the Oklahoma estate tax wrongfully paid by defendant, and for the loss of interest on funds wrongfully paid in satisfaction of said estate tax.

/s/ Charles A. Hobbs
CHARLES A. HOBBS

1616 H Street, N.W.
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(National 8-4400)

Attorney for Plaintiffs

Of Counsel:

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FILES & MAHAN
Pawhuska, Oklahoma

Addresses of Plaintiffs:

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232 South 6th Street
Fairfax, Oklahoma 74637

IN THE UNITED STATES COURT OF CLAIMS

ARCHIE L. MASON, ET AL.,
PLAINTIFFS,

v.

UNITED STATES OF AMERICA,
DEFENDANT.

No. 417-70

ANSWER TO PETITION

First Defense

The court lacks jurisdiction of the subject matter, and also of the United States which has not consented to a suit of this nature.

Second Defense

Plaintiffs are estopped by past conduct from now complaining of those facts alleged in their complaint.

Third Defense

The petition fails to state a claim upon which relief can be granted against the United States.

Fourth Defense

1. As to paragraph 1, it consists of conclusions of law requiring no answer.

2. As to paragraph 2, it is admitted that an Order Appointing Administrator dated November 5, 1970, purporting to appoint Archie L. Mason and Margaret R. Mason co-administrators of the estate of Rose A. Mason, Osage Allottee No. 327, is on file in the office of the County Court Clerk, Osage County, Oklahoma; and that Rose A. Mason was not granted a certificate of competency pursuant to the Act of June 28, 1906.

3. Paragraph 3 is admitted.

4. Paragraph 4 states conclusions of law requiring no answer.

5. Paragraphs 5 and 6 are admitted, except that the Osage Agency paid to the Oklahoma Tax Commission estate taxes in the amount of \$8,087.10 vice \$7,762.93; and except to the phrase "arose from headright payments", which phrase is ambiguous and neither denied nor admitted.

6. Paragraphs 7 and 8 are denied.

7. Paragraph 9 contains conclusions of law as to which no answer is required, and is otherwise denied.

8. The defendant denies each and every allegation of the petition not specifically admitted, denied or qualified herein.

Fifth Defense

1. Plaintiffs were co-administrators of the Estate of Rose Mason, Osage Allottee No. 327, in September 1967 when the United States paid \$7,762.93 to the Oklahoma Tax Commission respecting the estate tax of Rose Mason. The plaintiffs appeared in person and by their attorneys, Files, Mahan and Wilson, in the County Court of Osage County, Oklahoma, on November 17, 1967; and the court, at the conclusion of the hearing, found that all taxes for which the estate was legally liable had been paid or arrangements had been made to pay them.

2. On May 10, 1968, in the County Court of Osage County, Oklahoma, the plaintiffs appeared through their attorneys, Files and Mahan, and the court discharged the co-administrators respecting the Estate of Rose A. Mason. The court also found that all taxes due and owing by said estate had been paid.

3. On December 4, 1968, an Order of the Oklahoma Tax Commission assessing estate, inheritance and transfer taxes was filed in the County Court of Osage County, In the Matter of the Estate of Rose Mason, Osage Allottee No. 327, deceased, Probate No. 8144, stating total tax and interest of \$8,087.10 was assessed to the estate. Thereafter, in December 1968, the United States paid an additional \$324.17 to the Oklahoma Tax Commission respecting this estate.

4. At the time of payment of the estate taxes to the State of Oklahoma by the United States, neither the plaintiffs nor their attorneys objected to payment of the Oklahoma estate taxes by the United States.

Sixth Defense

The State of Oklahoma is an indispensable party.

WHEREFORE, having fully answered, the defendant prays that the petition be dismissed.

Respectfully submitted,

/s/ Shiro Kashiwa
SHIRO KASHIWA
Assistant Attorney General

/s/ David W. Miller
DAVID W. MILLER
Attorney
Department of Justice

IN THE UNITED STATES COURT OF CLAIMS

ARCHIE L. MASON, ET AL.,
PLAINTIFFS,

v.

THE UNITED STATES OF AMERICA,
DEFENDANT.

No. 417-70

REPLY TO FIFTH DEFENSE OF ANSWER *

[Filed Jun. 14, 1971]

In reply to the Fifth Defense of the defendant's Answer, plaintiffs state and allege as follows:

1. As to Paragraph 1 of said Fifth Defense, plaintiffs admit that they were co-administrators of the estate of Rose Mason; that they appeared in person and by their attorneys, Files, Mahan and Wilson, in the County Court of Osage County, Oklahoma on November 17, 1967. Plaintiffs deny that said County Court made any binding, conclusive or final determination with respect to the legal validity of the assessment of state death taxes against the Indian trust property of the decedent. In further reply, plaintiffs allege that, under the procedure followed by the defendant's representative (the Osage Agency) in the administration of restricted Osage estates, neither estate representatives nor said County Court are even advised of the payment of state death taxes by the defendant on Indian trust property. The Osage Agency considers that under the 1938 Amendment to the Osage Allotment Act, Sec. 1, 52 Stat. 1034, the United States has total responsibility for the payment of all taxes—state and federal.

2. As to Paragraph 2, plaintiffs admit that on May 10, 1968, in the County Court of Osage County, plaintiffs appeared through their attorneys, and the court discharged them as co-administrators respecting the estate of Rose

* This Reply is filed pursuant to the Commissioner's Order of April 30, 1971. Under the Rules of this Court, a Reply to an Answer is not allowed except by Order of the Court or the Commissioner. See Rule 31(a).

Mason. Plaintiffs deny that said court made any binding, conclusive or final determination with respect to the legal validity of the assessment of state death taxes against the Indian trust property of the decedent. In further reply, plaintiffs allege that the fact or amount of payment of state death taxes was not before said court, that said court has no independent audit review function with respect to the payment of state death taxes on Osage Indian trust property, that the Osage Indian Agency was exclusively responsible, under defendant's own procedures for the payment of tax liabilities, and that neither said court nor the plaintiffs had any responsibility with respect to said tax liabilities.

3. Plaintiffs admit the allegation of Paragraph 3. Plaintiffs further allege that the filing of the assessment order on December 4, 1968, was the first notice or information filed with the County Court with respect to the state death tax assessment or payment and that said filing occurred several months after the discharge of plaintiffs as co-administrators of the estate of Rose Mason.

4. In reply to Paragraph 4, plaintiffs state that, under the procedure used by defendant in connection with the administration of deceased Osage Indian estates, the Osage Agency is exclusively responsible for the preparation and filing of any tax returns and the payment of any tax liabilities based on Indian trust property. Plaintiffs had no responsibility with respect to any such tax liability. The tax return in question was prepared and signed by the Agency and the tax was directly paid by the Agency. Plaintiffs' consent was neither sought nor obtained with respect to such payment. For the foregoing reasons, plaintiffs deny the allegations contained in Paragraph 4 of defendant's Fifth Defense.

5. In further reply to the Fifth Defense, plaintiffs state that, under defendant's regulation relating to the estates of deceased Osage Indians (25 C.F.R. §§ 108.26-28), administrators of the estate of a restricted Osage (and, specifically, plaintiffs with respect to the estate of Rose Mason), have virtually nothing to do with the trust property of a deceased restricted Osage Indian, beyond the ministerial function of arranging for passage of title. In fact, defendant, through the Osage Agency, exercises after death, as it did during life, the same untrammelled authority to

administer the trust property of a restricted Osage Indian. Plaintiffs were never in a position to consent or object to the payment of state death taxes. Preparation, execution and filing of the Oklahoma State death tax return and payment of the tax were functions and responsibilities arrogated or assumed by defendant alone. The decision to pay state death taxes in the instant estate was defendant's alone; there was no third party or court review of that decision.

Respectfully submitted,

By: Charles A. Hobbs
CHARLES A. HOBBS
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Washington, D.C. 20006
(Telephone: 628-4400)
Attorney for Plaintiffs

Of Counsel:
Pierre J. LaForce
Wilkinson, Cragun & Barker

IN THE UNITED STATES COURT OF CLAIMS

ARCHIE L. MASON AND MARGARET R. MASON,
Administrators of the Estate of Rose Mason,
Osage Allottee #327, a deceased restricted
Osage Indian,

PLAINTIFFS,

v.

UNITED STATES OF AMERICA,

DEFENDANT.

No. 417-70

UNITED STATES OF AMERICA,

THIRD PARTY PETITIONER,

v.

STATE OF OKLAHOMA,

THIRD PARTY DEFENDANT.

PETITION BY THE UNITED STATES AGAINST

THIRD PARTY DEFENDANT

The United States of America complains of the third party defendant and alleges:

1. Plaintiffs allege, in their petition which is incorporated herein by reference, that the United States wrongfully paid from certain Osage trust funds taxes to the State of Oklahoma taxing authorities.

WHEREFORE, the United States demands judgment against the third party defendant equal to such judgment, if any, as may be entered on behalf of the plaintiffs against the United States.

/s/ Shiro Kashiwa
SHIRO KASHIWA
Assistant Attorney General

/s/ David W. Miller
DAVID W. MILLER, *Attorney*
Department of Justice
Washington, D. C.

IN THE UNITED STATES COURT OF CLAIMS

ARCHIE L. MASON AND MARGARET R. MASON,
Administrators of the Estate of Rose Mason,
Osage Allottee #327, a deceased restricted
Osage Indian,

PLAINTIFFS,

VS.

UNITED STATES OF AMERICA,

DEFENDANT,

UNITED STATES OF AMERICA,

THIRD PARTY PETITIONER,

VS.

STATE OF OKLAHOMA,

THIRD PARTY DEFENDANT.

No. 417-70

[Filed Jun. 18, 1971]

ANSWER OF THIRD PARTY DEFENDANT

First Defense

The Court lacks jurisdiction of the subject matter, and also of the State of Oklahoma which has not consented to a suit of this nature.

Second Defense

Plaintiffs are estopped by past conduct from now complaining of those facts alleged in their Complaint.

Third Defense

The Petition of plaintiffs fails to state a claim upon which relief can be granted against the State of Oklahoma.

Fourth Defense

The Petition by the United States against the third party

defendant fails to state a claim upon which relief can be granted against the State of Oklahoma.

Fifth Defense

The third party defendant denies that the United States wrongfully paid to the State of Oklahoma trust funds which are the subject of this action.

Sixth Defense

The State of Oklahoma denies that they are a proper party to this action and specifically denies liability to the United States for any action taken by it.

Seventh Defense

1. As to paragraph No. 1, it consists of conclusions of law requiring no answer.

2. As to paragraph No. 2, it is admitted that an Order Appointing Administrator, dated November 5, 1970, purported to appoint Archie L. Mason and Margaret R. Mason, co-administrators of the Estate of Rose A. Mason, Osage Allottee #327, is on file in the office of the County Court Clerk, Osage County, Oklahoma; and that Rose A. Mason was not granted a certificate of competency pursuant to the Act of June 28, 1906, as amended.

3. At the present time the State of Oklahoma does not have sufficient facts to admit or deny the allegations stated in paragraph No. 3 of plaintiffs' Petition.

4. Paragraph No. 4 states conclusions of law requiring no answer.

5. The State of Oklahoma does not have sufficient facts to admit or deny the allegations contained in paragraphs No. 5 and 6 of the plaintiffs' Petition except that the defendant, United States, through its agent did prepare and file an Oklahoma Estate Tax Return for said decedent and subsequently paid to the State of Oklahoma the amount of such tax, to wit: Eight Thousand, Eighty-seven Dollars and Ten Cents (\$8,087.10).

6. Paragraphs No. 7 and 8 of the plaintiffs' Petition are denied.

7. Paragraph No. 9 contains conclusions of law to which no answer is required, and is otherwise denied.

8. Paragraph No. 1 of the Third Party Petition of the United States is denied.

9. The third party defendant denies each and every allegation of the Petition not specifically admitted, denied or qualified herein.

10. The third party defendant denies each and every allegation of the Third Party Petition not specifically admitted, denied or qualified herein.

WHEREFORE, having fully answered, the third party defendant prays that the Petition be dismissed and that neither the plaintiffs nor the third party petitioner take anything from the State of Oklahoma.

Respectfully submitted,

LARRY DERRYBERRY

Attorney General of Oklahoma

/s/ Paul C. Duncan

PAUL C. DUNCAN

Assistant Attorney General

Chief, Civil Division

Room 112, State Capitol Building

Oklahoma City, Oklahoma 73194

Oklahoma Tax Commission

/s/ Albert D. Lynn

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Oklahoma City, Oklahoma 73194

Attorneys for Third Party Defendant

IN THE UNITED STATES COURT OF CLAIMS

No. 417-70

[Filed Apr. 30, 1971, Court of Claims]

ARCHIE L. MASON, ET AL.

v.

THE UNITED STATES

Before COWEN, *Chief Judge*, LARAMORE, DURFEE, DAVIS,
COLLINS, SKELTON and NICHOLS, *Judges*.

ORDER

This case comes before the court on defendant's request, filed April 8, 1971, for review of the Trial Commissioner's order entered March 12, 1971, denying defendant's motion to join the State of Oklahoma as a third-party defendant. Upon consideration thereof, without oral argument,

IT IS ORDERED that defendant's said request for review be and the same is granted, the Trial Commissioner's order of March 12, 1971, is vacated, and defendant's motion, filed March 5, 1971, for inclusion of third-party defendant is granted.

April 30, 1971.

By The Court
Chief Judge

No. 72-654

UNITED STATES,
PETITIONER,

v.

ARCHIE L. MASON, ET AL.

ORDER ALLOWING CERTIORARI. Filed January 15, 1973.

The petition herein for a writ of certiorari to the United States Court of Claims is granted. The case is consolidated with No. 72-606 and a total of one hour is allotted for oral argument.